

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Warren Cope
Application No.: 09/998,569
Filed: 11/16/2001

Confirmation No.: 7850
Group No.: 2623
Examiner: David R. O'Steen

For: Video System For Use Where The Network Transfer Rate Is Slower Than The Video Display Rate

**Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Reply Brief

The video system of claim 1 stands rejected over the Real Player 8 User Manual (Gross) in view of U.S. Patent 6,175,871 (Schuster). In claim 1, a video system receives video from a communication network, stores the video in a memory, and transfers the video from the memory to a display. The video system initiates the transfer of the video from the memory to the display based on two time periods. The first time period is based on the amount of video in memory times the video display rate. The second time period is based on the network transfer rate times *the amount of video to be received*.

Neither Gross nor Schuster determine the amount of video to be received. The Examiner's Answer states that Gross determines the amount of video to be received. (See Examiner's Answer page 4, lines 16-17; See Gross page 51, lines 7-10; and page 15, figure 3.11). The cited portion of Gross on page 51 does not mention the amount of video to be received. On page 15 of Gross, the status bar indicates the amount of video ***to be displayed*** relative to the total length of the video. This feature works after the entire video has already been received – the default setting for Real Player. Note that this feature is disabled for live feeds. Also note that Gross discloses a position slider that allows the user to jump forward in the video which indicates that the entire video has

been downloaded. (See Gross, page 19). Gross determines the amount of video to be displayed, but does not determine amount of video to be received.

The system of Schuster is designed to handle telephone calls. (See Schuster, column 5, lines 5-6). On telephone calls, the amount of media to be received is dynamically controlled by the caller who may hang up at any time. Thus, the receiving system of Schuster could not determine the amount of media to be received. Although Schuster mentions video transfer, Schuster does not disclose that the amount of video to be received is determined.

Neither Gross nor Schuster initiate video display based on the network transfer rate times the amount of video to be received. The Examiner's Answer states that Gross does not determine the network transfer rate times the amount of video to be received. (See Examiner's Answer, page 3, line 21 to page 4, line 3). The Examiner's Answer asserts that Schuster determines the network transfer rate times the amount of video to be received. (See Examiner's Answer, page 4, lines 4-7; and see Schuster, column 3, lines 11-15). The cited section of Schuster does not refer to the amount of video to be received. The other sections of Schuster do not disclose that the parameters and variables in the cited section include the amount of video to be received. Rather, Schuster changes buffer length based on communication network performance ***which does not include the amount of video to be received.*** (See Schuster, column 7, lines 33-35; column 9 lines 1-8; column 10, lines 31-44; column 11, lines 28-64; column 12, lines 14-51; column 13, lines 34-39; and column 16, lines 14-19). Schuster never determines the network transfer rate times the amount of video to be received.

Neither Gross nor Schuster determine the amount of video to be received.
Neither Gross nor Schuster initiate video display based on the network transfer rate times the amount of video to be received. Thus, the combination of Gross and Schuster does not initiate video display based on the network transfer rate times the amount of video to be received as claimed.

The Examiner's Answer uses improper hindsight reasoning to modify the combination of Gross and Schuster. One skilled in the art would not modify the combination of Gross and Schuster to arrive at the invention. The cited art controls small memories that hold ***seconds*** of video. (See Gross, page 65; and see Schuster, column 13,

lines 34-39). In the art, these small memories smooth out small variances (measured in seconds) between the network transfer rate and the video display rate. Without hindsight reasoning, one skilled in the art would not implement the claimed technique to initiate video display from such a *small* memory.

The above comments apply to all claims on appeal.

Claims 3-4, 18-19, and 33-34 recite that the video display is initiated when the first time period (the video display rate times the video stored in memory) is equal to or greater than the second time period (the network transfer rate times the video to be received). The Examiner's Answer cites Schuster as disclosing these claim limitations. (See the Examiner's Answer page 5, line 18 to page 4, line 4; and see Schuster column 2, lines 57-59). The cited section of Schuster does not refer to the equal to or greater than limitations in claims 3-4, 18-19, and 33-34.

Claims 8, 23, and 38 recite the use of an intermission. The Examiner's Answer cites Gross as disclosing this claim limitation. (See the Examiner's Answer page 6, lines 13-16; and see Gross page 65, lines 11-13). The cited section of Gross allows the user to set the seconds of video to buffer, but does not mention an intermission.

Claims 9, 24, and 39 recite a user-selected portion of a video. The Examiner's Answer cites Gross as disclosing this claim limitation. (See the Examiner's Answer page 6, lines 17-20; and see Gross page 65, lines 11-13). The cited section of Gross allows the user to set the seconds of video to buffer, but does not mention any user selection of a portion of the video.

Claims 13, 28, and 43 recites an indication of the time remaining before video display initiates. The Examiner's Answer cites Gross as disclosing this claim limitation. (See the Examiner's Answer page 7, lines 7-9; and see Gross page 9, figure 3-1). The cited section of Gross discloses a time feature that indicates how much of the video has been displayed, but the time feature does not indicate the time before the video display will initiate.

Thus, the Examiner's Answer incorrectly interprets the cited art to maintain the rejection of the appealed claims. Appellants respectfully request allowance of the appealed claims.

Appellants believe no fees are due with respect to this filing. However, should the Office determine fees are necessary, the Office is hereby authorized to charge Deposit Account No. 210765.

Respectfully submitted,

/Michael J. Setter/
SIGNATURE OF PRACTITIONER
Michael J. Setter, Reg. No. 37,936
Setter Roche LLP
Telephone: (720) 562-2280

Correspondence address:

CUSTOMER NO. 28004

Attn: Melissa A. Jobe
Sprint Law Department
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A461
Overland Park, KS 66251